

**UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
REGION 27**

PHIL LONG EUROPEAN IMPORTS, LLC,

Employer,

and

Case No. 27-RC-8071

INTERNATIONAL UNION OF OPERATING ENGINEERS,  
LOCAL NO. 9, AFL-CIO,

Petitioner.

**DECISION AND DIRECTION OF ELECTION**

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, herein referred to as "the Act," a hearing was held before a hearing officer of the National Labor Relations Board, herein referred to as "the Board."

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the Undersigned.

Upon the entire record in this proceeding,<sup>1</sup> the Undersigned finds:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

2. Phil Long European Imports, LLC, herein called "the Employer," is a Colorado corporation engaged in the retail sales and service of European automobiles.

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<sup>1</sup> Under Section 102.67(a) of the Board's Rules and Regulations, briefs may be filed after the close of the hearing. Under Section 102.111(b), briefs must be received before the official closing time of the receiving office on the last day of the time limit. The hearing in this matter closed on August 15, 2000 and briefs were due by close of business on August 22, 2000. The Regional Office received the Petitioner's brief on August 23, 2000. Accordingly, the Petitioner's brief is rejected.

During the past calendar year the Employer purchased and received at its Colorado facilities goods valued in excess of \$5,000 directly from suppliers located outside the State of Colorado, and during that same period of time had gross sales in excess of \$500,000. The Employer is engaged in commerce within the meaning of Section 2(6) and (7) of the Act and it is subject to the jurisdiction of the Board.

3. International Union of Operating Engineers, Local No. 9, AFL-CIO, herein called "the Petitioner," is a labor organization within the meaning of Section 2(5) of the Act. The Petitioner claims to represent certain employees of the Employer.

4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act, and it will effectuate the purposes of the Act to assert jurisdiction herein.

5. The following employees of the Employer constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

**INCLUDED:** all full-time and regular part-time service technicians employed by the Employer at its facility at 1115 Motor City Drive, Colorado Springs, Colorado 80906.

**EXCLUDED:** office and clerical employees, guards, sales people, and supervisors as defined in the National Labor Relations Act.<sup>2</sup>

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<sup>2</sup> Evidence was adduced at the hearing concerning two individuals, Samantha Sadorus and Theresa Brown, who share a cashier position that is stationed near the service technicians. The evidence shows that the cashiers handle cash, take care of filing documents, and relay phone calls to the Service Department. They receive hourly compensation. The office manager, Donde Knapp, hires, supervises, and disciplines the cashiers. The Employer stated at the hearing that it did not take a position regarding whether the cashier should be included in the unit. It also stated that it would not object to inclusion of the cashier position, if the Board placed that position in the unit. In its brief, the Employer does not discuss the cashier position. At the hearing, the Petitioner opposed inclusion of the cashiers on the grounds that the position is clerical in nature. Based on the differences in job duties and the separate supervision for the

## **STATEMENT OF FACTS**

The Petitioner seeks to represent a unit of all service technicians, excluding office and clerical employees, guards, sales people, and supervisors as defined in the National Labor Relations Act.<sup>3</sup> Contrary to the Petitioner, the Employer contends that a unit limited solely to service technicians is inappropriate and that the only appropriate unit should also include its service advisors, lot attendants, and parts advisors.

### **Background**

The Employer operates a facility at 1115 Motor City Drive, Colorado Springs, Colorado 80906. At that location, there is a building that houses the Employer's Service Department and its Parts Department. From that building, the Employer repairs customers' vehicles.

All of the Employer's employees are subject to common rules and procedures. Employer-wide employee benefits include a 401(k) plan, a medical and dental plan, vacation pay, paid holidays, sick leave, bereavement leave, safety glasses, and partial reimbursement for the cost of safety shoes.

There is no history of collective bargaining among the Employer's employees.

### **The Service Department Employees**

The Employer's Service Department specializes in servicing Audi and Mercedes Benz vehicles. The Service Department has eight service technicians, three service

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service technicians and the cashiers, and the Petitioner's desire to exclude that position from the unit, I find that the cashier position should be excluded from the appropriate unit found herein.

<sup>3</sup> The Petition requests a unit consisting of "all mechanics." At the hearing, the Petitioner amended the unit description to cover "all service technicians." The Petitioner acknowledged that the title "service technician" is a substitute title for the mechanic position.

advisors, and two lot attendants.<sup>4</sup> Service Manager Carl Stephen Differding is in charge of the Service Department. The Service Department employees report directly to him. Differding does the hiring and firing for the Service Department. He also reviews the work of the Service Department employees and counsels them regarding performance problems.

The service technicians' job is to diagnose problems with vehicles based on customers' descriptions of problems and to repair those problems. They are the only employees who do the mechanical work necessary to service vehicles. Four service technicians work on Audi vehicles; the remaining four technicians service Mercedes Benz vehicles. The service technicians work in a service shop, which is an area with ten work bays. In hiring service technicians, the Employer looks for applicants who have an Automotive Service Excellence ("ASE") certification. Almost all of the Employer's current technicians have at least five years experience working as technicians on import cars. At least one of the service technicians, Dan Thompson, has approximately 20 years experience in the business. The service technicians receive ongoing factory training from Audi and Mercedes Benz. The average technician receives training approximately two times per year. The service technicians use special tools to perform their jobs. The dealership provides some of those tools, including diagnostic computers and heavy equipment. The service technicians supply many of their own tools at their own expense. The average value of the tools that the

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<sup>4</sup> The service technicians are Ed Aldridge, Tony Cobb, Mark Melnick, Joe Moya, Kevin Roberts, Danny Thompson, Don Tuck, and Jeff Tuttoilmond. The service advisors are Mike Cope, Dan Darling, and Ed Sharp. The service lot attendants are Robert Barrerra and Brian (last name unknown).

technicians purchase is about \$20,000 to \$30,000. The service technicians are paid based upon a preset time that a particular repair should take and upon the particular technician's hourly rate of pay. The technicians' average annual income is approximately \$30,000 to \$40,000. The technicians wear a uniform.

The service advisors' primary responsibility is to greet customers, to find out what problems the customers are experiencing with their vehicles, and to keep the customers informed about the status of their vehicles during the repair process. The service advisors are not qualified to repair vehicles. Two of the service advisors are physically stationed just off the service shop, near the customer entrance. The other service advisor has an office in a separate location. That particular service advisor has less direct contact with customers than the other two advisors; he handles more phone calls and deals more frequently with the service technicians. The service advisors fill out repair orders and places those orders in a wall rack that has a section for each of the service technicians. The advisors are not assigned to work with particular technicians. The service technicians take the repair orders from the rack and later return them to the service advisors. The advisors are the employees who normally deal directly with the customers, although the service technicians occasionally speak to customers. To communicate effectively with the customers, the service advisors talk to the service technicians about the status of the vehicles. Service advisors are paid a commission based upon a customer satisfaction index and on the amount of parts and labor they generate. The advisors' average annual income is about \$30,000 to \$40,000. The service advisors do not use special tools to perform their jobs. They commonly use phones and computers to perform their work. Approximately once per week, the service

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advisors use the service technicians' diagnostic computers to check how long a particular repair should take. Approximately once per year, the service advisors receive training on new vehicle models at service advisors school. That training does not cover repairs. The service advisors wear street clothes to work; they do not have to wear a uniform.

The Service Department lot attendants' primary responsibility is to move customers' vehicles from drop off points to the service parking lot and to wash vehicles using a wash pump. The lot attendants spend most of their time in the parking lots and in a wash bay located next to the service shop area. The lot attendants hang the vehicles' keys on a service board so that the service technicians can bring the vehicles from the lots into the service shop. When a repair is finished on a vehicle, an attendant drives the vehicle to the front door for the customer. Occasionally, approximately once or twice per week, the lot attendants drive customers' vehicles to warm them up for the service technicians. The lot attendants receive an hourly wage. Their average annual income is about \$15,000 to \$25,000. Attendants wear the same type of uniform that the technicians wear.

One Service Department lot attendant, Robert Barrerra, sometimes works as a roadside assistance technician. As part of that responsibility, Barrerra takes care of minor roadside repairs. He is on call 24 hours per day. The Employer provides him with a roadside assistance vehicle. Barrerra uses the tools that are in the roadside assistance vehicle, including wrenches, jumpers, a tow strap, a fuel canister, and an air canister. He performs that roadside assistance function only rarely.

In addition to the two lot attendants who work in the Service Department, there are two other lot attendants who work primarily in the Sales Department.<sup>5</sup> The Sales Department lot attendants use the same washbay as the Service Department lot attendants. The Service Department lot attendants and the Sales Department lot attendants help each other out when staffing is short. They assist each other only about two or three days per month.

### **The Parts Department Employees**

The Employer's parts shop is located near the service shop on the other side of a wall that separate the two areas. There are three parts advisors who work in the Parts Department.<sup>6</sup> Two of those parts advisors, Lance Mullins and Preston Stockton, deal primarily with service technicians when the technicians need parts to complete their repairs. In such instances, the parts advisors gather the needed parts, either from the dealership's stock or by ordering the parts from suppliers. A special area in the parts shop is set aside for assisting the service technicians. The third parts advisor, Reed McLuan, works a front counter and usually deals with the general public on their parts needs. The front counter parts advisor helps out with the service technicians when necessary. The parts advisors use phones and computers to perform their work. They do not attend factory training and are not certified, though they receive training through watching videotapes. The supervisor for the Parts Department is Ron Johiem. Service Manager Differding has no authority over the parts advisors. Parts advisors are paid on commission. The record does not disclose the annual income of the parts advisors.

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<sup>5</sup> The Sales Department lot attendants are David Benoit and Robert Raposa.

<sup>6</sup> The parts advisors are Reed McLuan, Lance Mullins, and Preston Stockton.

## **Interchange Between the Service Technicians and the Other Employees**

The service advisors, lot attendants, and parts advisors do not gain sufficient knowledge and experience in their positions to qualify them to move into service technician positions. One of the current service technicians, Dan Thompson, has worked as a service advisor, but for an employer other than the Employer. Another service technician, Kevin Roberts, previously worked as a lot attendant, but his work in that position did not qualify him for the technician job. Lot attendant Robert Barrerra has an interest in becoming a service technician, but he does not possess the necessary qualifications at present. One of the parts advisors, Lance Mullins, may have enough knowledge and experience to function as a service technician, but the record does not disclose that he acquired that knowledge and experience through his parts advisor position. The service advisors, lot attendants, and parts advisors do not fill in for the service technicians when there are not enough technicians to take care of the available work, nor do the service technicians fill in for any of the other groups of employees.

The service technicians spend approximately 80 percent of their time working in the service shop taking care of vehicles. Five percent of the service technicians' time is spent working with the service advisors to keep them informed about the status of repairs so that the advisors, in turn, can keep the customers informed. The service technicians spend another five percent of their time working with the parts advisors. When the service technicians need parts, they go into the parts shop to ask the parts advisors for the parts. Occasionally, the parts advisors enter the service shop to deliver parts or to discuss the service technicians' parts needs. One of the parts advisors,



Preston Stockton, usually takes parts over to the service shop. The remaining 10 percent of the service technicians' time is taken up with road testing vehicles. The service technicians occasionally tell the service lot attendants to warm up vehicles or to wash them. The service technicians only regular contact with the sales lot attendants occurs at the time the sales lot attendants take vehicles back to the sales area after the service technicians have finished performing pre-delivery inspection of new cars.

There is limited, informal interaction between the service technicians and the other employees. The employees sometimes socialize with each other during the work day. The technicians usually eat lunch in the service shop; sometimes other employees come in during lunch. There is not a common lunchroom in the facility. There are dealership-wide picnics and barbecues at which all employees can interact. The service technicians, lot attendants, and parts advisors may share a locker room and rest room.

### **ANALYSIS AND CONCLUSIONS**

As stated above, the Petitioner seeks to represent a unit consisting of the service technicians. The Employer contends that a unit limited only to the service technicians is inappropriate and that the only appropriate unit should also include the service advisors, lot attendants, and parts advisors.

Initially, I note that the Employer contends that the service technicians, service advisors, lot attendants, and parts advisors should be included in the same bargaining unit, because they share a community of interest due to the presence of factors such as the functional integration of their work, common supervision, interaction, close proximity, and common benefits and work rules and procedures. While those employees may

share a community of interest based on such factors, the existence of such a community of interests is not controlling. It is well established that there may be more than one appropriate bargaining unit within the confines of a single employing unit and that the Board is free to select any one of those appropriate units as the unit. See, e.g., American Hosp. Ass'n v. NLRB, 499 U.S. 606, 610 (1991). In accord with that established principle, the Board's longstanding policy is to accept a petitioned-for unit so long as that unit is one of the possible appropriate bargaining units. See Overnite Transp. Co., 322 NLRB 723, 723 (1996). "A union is . . . not required to request representation in the most comprehensive or largest unit of employees of an employer unless 'an appropriate unit compatible with that requested unit does not exist.'" Id. (quoting P. Ballantine & Sons, 141 NLRB 1103, 1107 (1963)). Thus, the issue to be decided here is whether the petitioned-for unit is an appropriate one under Board law, not whether a more comprehensive unit, such as that proposed by the Employer herein, would be a better or more appropriate unit.

With respect to the Employer's contention that its proposed unit should be the one directed for election because the employees all perform functions that are related to a coordinated effort to service customers' vehicles, the Board has rejected similar arguments in analogous cases. In Dodge City of Wauwatosa, 282 NLRB 459, 460 (1986), the Board concluded that auto service technicians could be included in a unit separate from other service department employees even though the functions performed by all employees were related to customer service and repair. Similarly, in Fletcher Jones Chevrolet, 300 NLRB 875, 876 (1990), the Board rejected the employer's contention that a unit of service technicians was inappropriate, because

other employees also were integrally involved in the single function of servicing and repairing automobiles.

Under the guidance of Dodge City of Wauwatosa and Fletcher Jones Chevrolet, service technicians appropriately may be included in their own bargaining unit where circumstances demonstrate that the service technicians share a community of interest separate and apart from the other employees. Thus, in Dodge City of Wauwatosa, the Board determined that service technicians constituted their own appropriate unit, because they were a distinct and homogeneous group of highly trained and skilled craftsmen who were primarily engaged in the performance of tasks that were different from the work performed by other service department employees, the mechanics' work required the use of substantial skills and specialized tools and equipment, and the mechanics had extensive training or experience. In Fletcher Jones Chevrolet, the Board found the unit of service technicians to be an appropriate unit, because the technicians formed a homogeneous group, performed distinct job duties, possessed skills that the other service employees lacked, supplied their own tools, had limited contact with other employees, and were compensated at a different rate. In Overnite Transp. Co., 331 NLRB No. 85, slip op. at 3 (June 30, 2000), the Board recently cited Dodge City of Wauwatosa and Fletcher Jones Chevrolet in support of its finding that mechanics at a service center would constitute a separate appropriate bargaining unit.

Application of the considerations discussed in Dodge City of Wauwatosa and Fletcher Jones Chevrolet to the instant matter supports a finding that a unit of service technicians, separate from the other employees, is warranted. The service technicians work primarily in the service shop and are physically separate from the other employees

for most of their work time. The service technicians are the only employees who perform repair work on vehicles. To perform that function, they necessarily have special skills and training that the other employees lack. The service technicians also use special tools and equipment that the other employees do not use, and they supply many of those tools themselves. While one of the service lot attendants occasionally handles roadside assistance needs, the level of necessary skill is minimal and does not require the use of sophisticated tools. Additionally, the level of contact between the service technicians and the other employees is not so frequent as to compel the conclusion that all of the employees must be included in the same unit. Moreover, the service technicians are the only employees compensated on the basis of prescribed average repair times. Further, there are additional distinctions between the service technicians and the parts advisors and sales lot attendants, as the parts advisors and sales lot attendants work in different departments and are subject to immediate supervision by different personnel.

I find the Employer's reliance on the Board's decision in R.H. Peters Chevrolet, 303 NLRB 791 (1991), to be misplaced. In that case, the Board determined that the service advisors shared a community of interests with a stipulated unit of employees that included mechanics. Id. at 791-792. It does not follow from that determination, however, that mechanics and other service employees must be included in the same unit and that a unit limited to service technicians is inappropriate. As discussed above, there can be more than one appropriate bargaining unit in a given employment setting. Thus, the Board's decision in R.H. Peters Chevrolet that the service advisors and mechanics had certain community of interests is not inconsistent with the decision

herein, which is based on Board's holdings in Dodge City of Wauwatosa and Fletcher Jones Chevrolet that the petitioned-for unit of service technicians is appropriate for collective bargaining.

There are approximately eight employees in the unit found appropriate herein.

### **DIRECTION OF ELECTION**

An election by secret ballot shall be conducted by the Undersigned among the employees in the Unit found appropriate at the time and place set forth in the Notice of Election to issue subsequently, subject to the Board's Rules and Regulations.<sup>7</sup> Eligible to vote are those in the Unit who are employed by the Employer during the payroll period ending immediately preceding the date of this Decision and Direction of Election, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Also eligible are employees engaged in an economic strike which commenced less than 12 months before the election date and who retained the status as such during the eligibility period, and their replacements. Those in the military services of the United States Government may vote if they appear in person at the polls. Ineligible to vote are employees who have quit or been discharged for cause since the designated payroll period, employees engaged in a strike who have been discharged for cause since the commencement thereof and who have not been rehired or reinstated before the election date, and employees engaged in an economic strike which commenced more than 12 months before the election date and who have been

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<sup>7</sup> Your attention is directed to Section 103.20 of the Board's Rules and Regulations. Section 103.20 provides that the Employer must post the Board's Notice of Election at least three full working days before the election, excluding Saturdays and Sundays, and that its failure to do so shall be grounds for setting aside the election whenever proper and timely objections are filed. Please see the attachment regarding the posting of election notice.

permanently replaced. Those eligible shall vote whether or not they desire to be represented for collective bargaining purposes by:

INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL NO. 9.

### **LIST OF VOTERS**

In order to ensure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties in the election should have access to a list of voters and their addresses which may be used to communicate with them. Excelsior Underwear Inc., 156 NLRB 1236 (1966); NLRB v. Wyman-Gordon Co., 394 U.S. 759 (1969); North Macon Health Care Facility, 315 NLRB 359 (1994). Accordingly, it is hereby directed that within seven (7) days from the date of this Decision, two (2) copies of an election eligibility list containing the full names and addresses of all the eligible voters shall be filed by the Employer with the Undersigned, who shall make the list available to all parties to the election. In order to be timely filed, such list must be received in the Regional Office, National Labor Relations Board, 700 North Tower, Dominion Plaza, 600 Seventeenth Street, Denver, Colorado 80202-5433 on or before **August 31, 2000**. No extension of time to file this list shall be granted except in extraordinary circumstances, nor shall the filing of a request for review operate to stay the requirement here imposed.

### **RIGHT TO REQUEST REVIEW**

Under the provision of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision and Direction of Election may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th

Street, NW, Washington, DC 20570. This request must be received by the Board in Washington by **September 7, 2000**. In accordance with Section 102.67 of the Board's Rules and Regulations, as amended, all parties are specifically advised that the Regional Director will conduct the election when scheduled, even if a request for review is filed, unless the Board expressly directs otherwise.

Dated at Denver, Colorado this 24th day of August 2000.

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B. Allan Benson, Regional Director  
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